

**Exhibit 10
(Redacted)
(Previously Filed Under Seal as Dkt. 460-10)**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

FAIR ISAAC CORPORATION,

Plaintiff,

v.

FEDERAL INSURANCE COMPANY, and
ACE AMERICAN INSURANCE COMPANY

Defendants.

Case No. 16-CV-1054(WMW/DTS)

**EXPERT REPORT OF
NEIL J. ZOLTOWSKI
WITH RESPECT TO DAMAGES**

Respectfully submitted this 19th day of April, 2019



CONFIDENTIAL – ATTORNEYS' EYES ONLY

prospective policy.¹⁸⁷ Once a claim is processed and paid, the actuarial department uses CIS Claims to determine the severity of the claim.¹⁸⁸

92. **Table 5** below is a summary that includes a description of each domestic application and how it is used by Defendants.

Table 5: Summary of Defendants' Domestic Blaze Advisor Applications

| Application | Function |
|---|---|
| CSI eXPRESS | Policy administration application for the Specialty line of business in the U.S. and Canada. |
| Automated Renewal Process | Application used to automatically book, bind and issue renewal policies. |
| Profitability Indicator | Application used to assess the risk associated with an insurance policy to precisely price. |
| Decision Point | Application used by agents/producers to generate quotes for new insurance policies. |
| Commercial Underwriting Workstation (CUW) | Application that “supports commercial underwriting and processing throughout the underwriting lifecycle.” |
| Premium Booking | Ensures that insurance premiums for issued policies comply with Chubb rules and regulations. |
| Individual Rate Modification Application (IRMA) | Ensures individual rate modifications are applied consistently and meet state requirements. |
| Texas Accident Prevention System (TAPS) | Generates letters related to issued worker’s compensation policies that are required by the State of Texas. |
| CIS Claims | Assesses the severity of a policy claim. |
| Cornerstone | Used for surety bond issuance and maintenance. |

ii. Foreign Applications

a) *European Zone Executive Risk (“EZER”)¹⁸⁹*

93. EZER is the European zone policy administration application and workstation used by Defendants in the UK and thirteen (13) countries within the European Group to “support [the] complete end to end policy life-cycle for all CCI and CSI business.”¹⁹⁰ It is used during the underwriting process to quote, bind, renew, endorse cancel, and reinstate policies and generate reports and documents for underwriters.¹⁹¹ For example, EZER uses Blaze Advisor for ARPI

¹⁸⁷ Mirolyuz 1/11/19 Deposition at 60.

¹⁸⁸ Mirolyuz 1/11/19 Deposition at 59.

¹⁸⁹ FED016469_0001-0046 at 0004.

¹⁹⁰ Mirolyuz 1/11/19 Deposition at 66-67; FED04571 at “Application Summary” worksheet; FED016469_0001-0046 at 0005.

¹⁹¹ FED016469_0001-0046 at 0005, 0032.

automated renewal analyses similar to the process carried out by Automated Renewals in the United States.¹⁹²

94. Defendants use EZER in the Chubb Commercial Insurance (CCI) and Chubb Specialty Insurance (CSI) businesses in Chubb's European zone (EUZ).¹⁹³ According to Defendants, EZER was first used in the United Kingdom in 2012.¹⁹⁴

b) *Evolution*

95. Evolution is a policy administration application used by Defendants in Canada and Australia to "support[] the entire policy administration life cycle."¹⁹⁵ Unique from other Defendant policy administration applications, Evolution in Canada supported all Chubb Corp business units and products including CPI, CCI, and CSI prior to the Acquisition.¹⁹⁶ For example, Evolution uses Blaze Advisor for underwriting guidance, and "it has its own service developed for that particular application."¹⁹⁷ It supports both internal and external users and the user interface "doubles as a market facing portal."¹⁹⁸

96. Evolution was developed to, among other things, (i) improve underwriting productivity and increase capacity for growth (ii) automate tasks, so certain resources could be redeployed (iii) improve service to brokers and clients by speeding policy delivery (iv) "improve risk management," and (v) decrease maintenance costs.¹⁹⁹

¹⁹² Mirolyuz 1/11/19 Deposition at 67.

¹⁹³ Federal Insurance Company's Sixth Supplemental Answer to Plaintiff's Interrogatory No. 18, dated March 21, 2019 at 3.

¹⁹⁴ Federal Insurance Company's Sixth Supplemental Answer to Plaintiff's Interrogatory No. 18, dated March 21, 2019 at 3.

¹⁹⁵ FED003989_0001-0020 at 004.

¹⁹⁶ FED003989_0001-0020 at 004.

¹⁹⁷ Mirolyuz 1/11/19 Deposition at 73, 81.

¹⁹⁸ FED003989_0001-0020 at 004.

¹⁹⁹ FED003989_0001-0020 at 004.

c) *Broker Site*

97. Broker Site is “a front-end quoting system” integrated with Evolution in Canada.²⁰⁰ It also allows brokers to access information and documents such as billing and claims information and reference libraries of contract guides, rates and rules, product highlights, training and webcasts.²⁰¹ It is used in Defendants’ Personal and Commercial lines to help brokers manage their clients. Broker Site interfaces with and draws information from the Evolution policy administration system.²⁰²

d) *Adapt*

98. Adapt is the policy administration application used in the United Kingdom, Australia, and other European Countries.²⁰³ It is broker-facing and allows for real-time binding and issuing of policies and is used for, among other things, back-end administration, automation, document generation and electronic filing.²⁰⁴ Adapt also enables a broker to view and manage his or her own portfolio.²⁰⁵ Adapt has been used in Australia since 2007 for the A&H business unit and applies business rules in Blaze Advisor for underwriting guidance.²⁰⁶

e) *Exari*

99. Exari functions as an additional data collection source following EZER’s initial data collection.²⁰⁷ This iterative data collection reduces the underwriter’s time and effort.²⁰⁸ Chubb canceled the Exari project at or around January 27, 2016, the time that ACE Limited acquired Chubb Corp.²⁰⁹

²⁰⁰ Federal Insurance Company’s Fifth Supplemental Answer to Plaintiff’s Interrogatory No. 19, dated March 2, 2019 at 3.

²⁰¹ FED04571 at “Application Summary” worksheet.

²⁰² Mirolyuz 1/11/19 Deposition at 72-73.

²⁰³ FED014390_0006 and 010.

²⁰⁴ FED014390_0006.

²⁰⁵ FED014390_0006.

²⁰⁶ Mirolyuz 1/11/19 Deposition at 69; Federal Insurance Company’s Fifth Supplemental Answer to Plaintiff’s Interrogatory No. 20, dated March 21, 2019 at 3.

²⁰⁷ FED008352_0001.

²⁰⁸ FED008352_0001.

²⁰⁹ FED017913_0001-002.

100. **Table 6** below is a summary of Defendants' foreign applications that use Blaze Advisor software.

Table 6: Summary of Defendants' Foreign Applications

| Application | Function |
|-------------|--|
| EZER | Policy administration system used for Specialty/Financial and Commercial Insurance and A & H business units in the United Kingdom and European Zone. |
| Evolution | Policy administration application for all lines of business in Canada and certain business lines in Australia. |
| Broker Site | A front-end quoting system integrated with Evolution in Canada. |
| Adapt | Policy administration application for the A & H line of business in the European Zone and Australia. |
| Exari | Application used to collect data. |

D. FICO's Pricing for Blaze Software

101. The process by which FICO prices Blaze Advisor licenses has not changed since November 2003.²¹⁰ FICO has used two different pricing grids for both named application and enterprise-wide licenses and has done so since these two pricing grids were created.²¹¹ The prices in these grids reflect amounts for perpetual licenses.²¹² However, FICO also offers Blaze Advisor for named applications on an annual basis.²¹³

i. Named Application Standard Deployment License Fees

102. FICO's customers typically license Blaze Advisor on a "named application" basis.²¹⁴ To price these licenses, FICO has used a nine-factor "Application Sizing Matrix" ("ASM") and a "Category Pricing Matrix" ("CPM") rate table that corresponds to the size of the application derived from the ASM.²¹⁵

²¹⁰ Waid 1/16/19 Deposition at 89, 97-99, 108, 110.

²¹¹ I understand these pricing grids were used to determine the pricing for the SLM Agreement in 2006 executed by FICO and Chubb & Son.

²¹² Waid 1/16/19 Deposition at 89, 97-99, 108, 110.

²¹³ Waid 1/16/19 Deposition at 89, 97-99, 108, 110.

²¹⁴ Waid 1/16/19 Deposition at 24.

²¹⁵ Waid 1/16/19 Deposition at 39-40, 104, 108, 110, 131; Declaration of William Waid in Support of Fair Isaac Corporation's Opposition to Federal Insurance Company's Motion to Compel ("Waid Declaration") Exhibit A (FICO0000830). The ASM plus CPM are called the "Blaze Advisor Price List from 2003."

103.

104.

105.

ii. **Support and Maintenance Fees**

106. Further, Blaze Advisor licenses are packaged with support and maintenance services that

[REDACTED] .²²⁴ The support and maintenance services commence upon shipment of the software.²²⁵

²¹⁶ Waid 1/16/19 Deposition at 99-100.

²¹⁷ Waid Declaration at Exhibit A (FICO0000830).

²¹⁸ Waid Declaration at Exhibit A (FICO0000830).

²¹⁹ Waid 1/16/19 Deposition at 39-40; Waid Declaration at Exhibit A (FICO0000830).

²²⁰ Wajid 1/16/19 Deposition at 108; Wajid Declaration at Exhibit A (EJCQ00000830).

²²¹ Waid Declaration at Exhibit A (EFCO0000830).

²²² Waid 1/16/19 Deposition at 129 and Exhibit 229 (Plaintiff Fair Isaac Corporation's Second Supplemental Answers to Defendant's Interrogatory Nos. 6-9, dated April 23, 2018).

²²³ Waid 1/16/19 Deposition at 129 and Exhibit 229 (Plaintiff Fair Isaac Corporation's Second Supplemental Answers to Defendant's Interrogatory Nos. 6-9, dated April 23, 2018).

²²⁴ Deposition of William Waid, dated April 2, 2019 (“Waid 4/2/19 Deposition”) at 72-74.

²²⁵ See, generally, Schreiber Deposition at Exhibit 110 (EFC00001702-722 at 713-717).

iii. Development Seat Fees²²⁶

107. I understand that FICO requires licensees to maintain development seat licenses to sustain existing and/or develop new applications incorporating Blaze Advisor. These seats are separately priced from software licenses and are necessary to support and maintain the software. The number of development seats varies by the size of the corresponding application using Blaze Advisor. The seats are licensed in packs of three (3) to thirty (30), and packs may be combined to satisfy the licensee's requirements.

iv. Multi-Platform Uplift²²⁷

108. Further, I understand an additional fee is required if an application utilizes Blaze Advisor on more than one platform. Specifically, of the Defendants' applications incorporating Blaze Advisor, I understand the Evolution application in Canada and CSI eXPRESS in the United States use two different platforms, and accordingly results in [REDACTED]. This incremental "multi-platform uplift" is calculated by multiplying [REDACTED] the deployment license fee derived from the CSM rate table previously described.

VI. SUMMARY OF OPINIONS

109. My opinions are based on careful consideration of the case-specific facts and circumstances, as well as my education, training and experience. As further discussed within this report, I also considered various factors and considerations as set forth in relevant case law. Based on the documents produced to date, I have reached the following opinions.

A. Lost Software Licensing, Support and Maintenance Fees

110. FICO has lost deployment license, development seat license, support and maintenance fees totaling \$37.4 million from Defendants' unlicensed and unauthorized use of Blaze Advisor between April 2010 and December 2019. These fees include improper usage in the United States of \$16.1 million and \$21.3 million in Canada, Australia, the United Kingdom and certain other countries in the European zone. (See **Schedule 3.0**).

²²⁶ Interview of William Waid; Waid Declaration at Exhibit A (FICO0000830).

²²⁷ Interview of William Waid; Waid 4/2/19 Deposition at 96-97, 228-229 and Exhibit 42; FED001020_0001; FED001311_0001-028 at 020.

B. Profits from Using and Distributing Blaze Advisor

111. FICO may be entitled to disgorge Defendants' profits from written premiums generated using Blaze Advisor.²²⁸ Between March 31, 2016 and March 2019, Defendants generated gross written premiums in the United States of \$28.4 billion. (See **Schedules 3.0** and **8.0**.) FICO may also be entitled to disgorge the profits from written premiums generated by certain foreign entities that used Blaze Advisor in Canada, Australia, the United Kingdom and certain other European countries between April 2013 and March 2019 of \$2.5 billion. (See **Schedules 3.0** and **9.0**). In total, FICO may be entitled to disgorge the profits from written premiums generated using Blaze Advisor of \$30.9 billion. (See **Schedule 3.0**).

VII. ANALYSIS OF DAMAGES

112. For purposes of my damages analysis, I have assumed that Defendants Federal and ACE American are liable for the causes of action asserted by FICO and as a result of Defendants' actions, FICO has suffered economic harm, and/or Defendants have realized improper economic benefits.

A. Lost FICO Software License, Support, and Maintenance Fees

i. Nature of Defendants' License Agreements

113. The appropriate measure of FICO's lost domestic license fees for the period from March 31, 2016 (i.e., the termination date) to December 2019 (i.e., the trial ready date in this matter) is FICO's annual named-application deployment and development seat license fees for the period each Blaze Advisor application is used without FICO's licensed consent. This is the appropriate measure of loss to FICO because it reflects the value of its software for each year of unlicensed use in each unlicensed application until that use is enjoined.

²²⁸ I understand based on the Copyright Act (17 U.S.C. § 504(b)) that: "In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit attributable to factors other than the copyrighted work." As a result, the damages presented related to copyright infringement damages reflect the dollar amounts associated with the gross written premiums through Defendants' allegedly infringing use of Blaze Advisor.

*Fair Isaac Corporation v. Federal Insurance Company and ACE American Insurance Company***SCHEDULE 5.0: Summary of Lost Fees for Foreign Applications**

| Foreign Application | Region | License, Support, and Maintenance (a) | Damages Period | | | Total Lost Fees |
|---------------------|-----------------|---------------------------------------|----------------|--------------|-------|----------------------|
| | | | Start Date | End Date (b) | Years | |
| ADAPT | Australia | \$ 452,925 | | | | |
| ADAPT | U.K. | 452,925 | | | | |
| Evolution | Australia | 440,573 | | | | |
| Evolution | Canada | 634,095 | | | | |
| EZER | U.K. and Europe | 440,573 | | | | |
| Exari | U.K. | 440,573 | | | | |
| Broker Site | Canada | 440,573 | | | | |
| Total | | \$ 3,302,235 | | | | \$ 21,262,691 |

Note/Source(s):

- (a) See **Schedule 7.0**.
- (b) I understand the trial ready date is December 9, 2019.
- (c) I understand the damages period starts at the latter of the first year of gross written premiums reported per interrogatory responses or 6 years before the filing date of April 21, 2016 (i.e., April 21, 2010). See **Schedule 12.0**.
- (d) I understand FICO asserts that ADAPT (Europe) was used in 2009. (FED014415_0001-0003.)
- (e) I understand FICO asserts that Evolution (Canada) was used in 2013. Further, I understand the Broker Site application is integrated with the Evolution (Canada) application. (Mirolyuz 1/11/2019 Deposition at Exhibit 186 (FED008481_0001-FED008482_0001); Harkin Deposition at 206-209.)
- (f) I understand the development of the Exari application started in 2013 and was abandoned in 2016. (Mirolyuz 1/11/2019 Deposition at Exhibit 187 (FED12301_0001; FED12303-0001); FED017913_0001-0002.)